



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION ON REHEARING

MPA/167494

PRELIMINARY RECITALS

Pursuant to a petition filed July 20, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 25, 2015, at Milwaukee, Wisconsin. A decision was issued on October 15, 2015. The Department requested a rehearing; that request was granted. A new hearing was held on December 9, 2015. This Decision, though very similar to the original decision in the case, completely replaces that October 15, 2015 Decision.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that additional personal care worker (PCW) hours may be paid for by the Medicaid program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sharon Beck, RN

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. A prior authorization (PA) request seeking Medicaid payment for 11 hours (or 44 units with each unit = 15 minutes) per week of personal care services and 7 hours (28 units) of travel time was filed on

behalf of Petitioner on or about February 18, 2015. The requesting provider was [REDACTED] LLC. The request was for 53 weeks. It was approved as requested.

3. An amendment to the approved, February 18, 2015 PA was filed by the provider on or about April 22, 2015. That amendment sought an increase in Petitioner's personal care services to 26.5 hours (106 units) per week. That request was denied.
4. Petitioner is 49 years of age (DOB 4/16/1966). He lives alone in the community. His diagnoses include chronic pain from a back injury that occurred about 10 years ago. He does have a spinal cord stimulator in his back but has not used it for a fairly long period of time - perhaps a year.
5. The Department did not find the requested hours of care in the amendment to be medically necessary.

DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3) (e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

Also, the following Administrative Code provision is relevant here:

DHS 107.112 Personal care services. (1) COVERED SERVICES. (a) Personal care services are medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(1)(a) and (b).

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence". This legal standard of review means, simply, that "it is more likely than not" that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a letter (Ex # 3) that detailed its rationale for modifying the original request for personal care services and denying the amendment. It need not be reproduced here. It provides a significant amount of detail as to why it denied additional time. In brief, the Department did not find medical documentation supported adding additional PCW time or that the differences in assessments two months apart were explained so as to justify the additional time. Additionally, the Department nurse consultant assigned to this case did appear for the rehearing and confirmed the Department position.

Evidence offered on behalf of Petitioner at the first hearing indicated that he has to have the batteries in the nerve stimulator charged and that he cannot do so himself. At the second hearing, the rehearing, Petitioner testified that he has not used the nerve stimulator for about a year. The Department nurse consultant noted that at this point it should not be used without consulting the medical provider. Further, it is the Department's position, and the reason it sought rehearing, that charging the battery is not a personal care worker service. Finally, Petitioner also testified that it takes about 45 minutes for bathing so he would like additional time allocated for bathing.

I am reversing the earlier decision and sustaining the department denial of the request for additional PCW services. The time for charging the nerve stimulator battery is not a PCW service and Petitioner is not even using the unit at this time. Again, other cares are not supported by the medical documentation and a concern about supervision because of falls does not seem warranted as Petitioner testified that he uses a wheelchair full time. Finally, the Department has a standard for bathing and Petitioner has been allocated that standard. That bathing is slow does not justify adjustments to the norm.

As noted before, some of the help Petitioner might benefit from – cooking, cleaning and the like – might be available through another program such as Family Care. The place to start for information as to those services is:

Disability Resource Center (DRC) of Milwaukee County

Phone: (414) [REDACTED]

TTY/TDD/Relay: 711

Email: InfoMilwDRC@milwcnty.com

Office Location:

1220 W. Vliet Street, Suite 300

Milwaukee, WI 53205

CONCLUSIONS OF LAW

That the evidence offered on behalf of Petitioner does not demonstrate that additional units of personal care worker service hours may be paid for by the Medicaid program.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

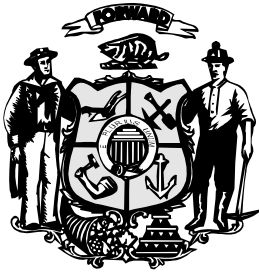
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of January 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 4, 2016.

Division of Health Care Access and Accountability